REMARKS

Summary of Office Action

In the Office Action, the Examiner rejected Claims 1, 3-7, 11-14, 17-20, 24-26 and 29-37 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,177,940 to Bond et al. (hereinafter "Bond") in view of U.S. Patent No. 6,341,265 issued to Provost et al. (hereinafter "Provost") and further in view of U.S. Patent No. 5,937,387 to Summerell et al. (hereinafter "Summerell"). The Examiner also rejected Claims 16 and 28 under 35 U.S.C. § 103(a) as being unpatentable over Bond in view of Provost and further in view of Summerell and U.S. Patent No. 7,016,856 to Wiggins (hereinafter "Wiggins"). No other issues were presented.

Summary of Amendments

Upon entry of the present Response to Office Action and Request for Continued Examination, Claims 1 and 19-20 will have been amended. Additionally, Claims 12-13 and 24-25 will have been cancelled. As such, Claims 1, 3-7, 11, 14, 16-20, 26, 28-33 and 35-37 remain currently pending. By the present amendment, Applicant submits that the rejections have been overcome and respectfully requests reconsideration of the outstanding Office Action.

Applicant's Response

1. Section 103(a) Rejection of Claims 1, 3-7, 11-14, 17-20, 24-26 and 29-37

The Examiner rejected claims 1, 3-7, 11-14, 17-20, 24-26 and 29-37 under 35 U.S.C. § 103(a) as being obvious over Bond in view of Provost and further in view of Summerell because the Examiner submits that Bond teaches a method for administering health care by generating a patient population (*see* Office Action page 2), while Provost teaches receiving a request for medical services and acting on the request (*see* Office Action page 4), and Summerell teaches making an assessment of a request for medical services by a primary care physician (*see* Office Action, page 4). This rejection is respectfully traversed.

Claim 1, as amended, is drawn to a method for administering health care to patients within a patient population by generating a patient population, receiving a request for medical services form a patient in the patient population, assessing the request to determine whether it substantiates a special clinical event, submitting a CPT code corresponding to a single medical service to be rendered in response to the clinical event and evaluating the single code for clinical and financial appropriateness, "wherein said evaluation is performed by a hospitalist or case manager that is other than the primary care physician, and wherein evaluating the single code submitted in step (d) comprises (i) evaluating the effectiveness or importance of the service required to be rendered in relation to the code, (ii) evaluating whether the submitted code is applicable to those health care services that are covered by the patient's health care, and (iii) evaluating whether the code is susceptible to duplicate and/or unbundled billing practice or otherwise provides any financial interest to the primary care physician" (emphasis added), and then responding to the submission based on the evaluation by indicating "either approval or disapproval to proceed with rendering the service corresponding to the code" (emphasis added).

The Bond, Provost and Summerell references do not render claim 1 unpatentable, because they do not teach or suggest each and every aspect of the claim. The Examiner admits that Bond does not teach or suggest receiving a request from a patient for medical

services, assessing the request, evaluating the request and responding to the request, as in parts (b)-(f) of claim 1. *Office Action*, page 3. Instead, the Examiner relies on the teachings of Provost to supposedly remedy the deficiencies of Bond. *Id.*

However, Provost also does not teach or suggest performing parts (b)-(f) of claim 1. Provost, as understood by Applicant, teaches a method for submitting health insurance claims for payment by an insurer. *See, e.g.,* Abstract. Provost teaches that a medical technician submits a claim form having diagnosis codes thereon from a client computer to a remote server (*see, e.g.,* Abstract), and further teaches that the remote server processes the codes to determine whether the claim corresponds to health care services are approved for payment (*see, e.g.,* Abstract). If the claim is approved, then the server can further transmit information that specifies the amount that will be paid by the insurer on behalf of the patient. *See, e.g.,* column 11, lines 19-27. In other words, Provost teaches an electronic method for submitting claim forms to obtain payment for medical services ***that have already been rendered***, and for which the medical provider is *"claiming"* the right to payment from an insurer for such service. Provost does not teach or suggest a method that is capable of checking to make sure a service is clinically and financially appropriate by evaluating a request for a medical service before the service is performed and then responding with "either approval or disapproval ***to proceed with rendering***" the medical service, as recited in part (f) of claim 1.

The distinction between the claim as amended and the teachings of Provost is important because, while the method of Provost provides an electronic means of validating insurance claims to reduce insurance fraud, the instant method assesses and checks the proposed services to be rendered ***before such services have been rendered***, thus keeping clinically or financially unnecessary services from even being performed. Thus, while Provost is concerned with reducing unnecessary costs to insurance companies by denying invalid claims to money for services performed after the fact, the instant method saves money and resources by ensuring that such unnecessary procedures do not get approval to be performed in the first place.

Furthermore, as Provost is only concerned from the insurer's perspective with approving or denying claims for services that have already been rendered, Provost does not teach or suggest the desirability of assessing medical service requests before rendering such services to ensure the necessity thereof. In contrast, the instant method is cooperative with both the medical service providers and insurers to optimize the resources of a health care network by providing a proactive check that counters wasteful and abusive practices by health care providers, health care providing institutions and patients to contain health care costs and conserve the utilization of health care resources, before such wasteful practices have occurred (*see, e.g.* paragraph [0008] of the instant specification). Accordingly, the claim as amended is not obvious over the teachings of Provost.

Provost also does not teach or suggest a method in which checks on medical services can be provided by evaluating "the effectiveness or clinical importance of the services to be required to be rendered in relation to the code, (ii) evaluating whether the submitted code is applicable to those health care services that are covered by the patient's health care, and (ii) evaluating whether the code is susceptible to duplicative and/or unbundled billing practice" *prior to indicating approval or disapproval to proceed with rendering the service,* as recited in part (e) of claim 1. Instead, as Provost is concerned with denying payment to invalid claims, Provost is not concerned with means by which proposed medical services can be evaluated for approval or disapproval prior to their being performed.

Summerell does not make up for the deficiencies of Bond and Provost. In the section to which the Examiner refers, Summerell teaches making an assessment of a patient by a primary care physician (*see, e.g.* column 5, lines 45-52.) However, Summerell does not teach or suggest a method involving evaluating requests for medical care based on codes related to a particular service and indicating approval or disapproval *to proceed with the requested service based on such an evaluation*, as in instant claim 1. Accordingly, claim 1 and the claims depending therefrom are considered to be patentable over the teachings of Bond in view of Provost and Summerell.

Yet another reason for the patentability of the claims over the cited references lies in the fact that none of the references teach or suggest a method in which the request for medical services from the patient is evaluated, not only with regards to whether it substantiates a specified clinical event, as in part (c) of claim 1, but also with regards to whether the request "substantiates the utilization of either *in-patient services, out-patient services, referral to a specialist*, or combinations thereof," (emphasis added) as in part (g) of claim 1, where the in-patient/out-patient services are performed by someone other than the primary care physician assessing the patient, and where the request for such services is also subject to evaluation prior to giving approval/disapproval to proceed with the services, similarly to parts (d)-(f) of claim 1. In particular, as Provost is *not* concerned with *preventive* measures to keep unnecessary procedures and referrals from occurring, and is only concerned with denying payment for invalid claims, Provost does not teach or suggest a method by which the request for referrals or out-patient services could be kept in check, as in the instant claim. Furthermore, Provost teaches that the claim forms are submitted from the office of the health care provider that has provided the treatment (*see, e.g.*, column 5, line 67 through column 6, line 12), and thus does not teach or suggest submitting forms for *prospective treatment* that is to be performed in a *separate office* or facility by a person other than the primary care physician. In contrast, the claimed method conserves resources by providing a check on not only those services performed by the primary care physician, but also on any services performed outside a primary care physician's office, such as in-patient/out patient services performed in a hospital setting, or the services of a specialist. As discussed above, Bond and Summerell do not teach or suggest methods of assessing and evaluating medical services to be provided, and thus also do not teach or suggest the claimed method.

As a final point regarding the patentability of claim 1 over the cited references, Applicant wishes to point out that none of the references teach or suggest *repeating the steps of* assessing the request for utilization of in-patient services, out-patient services or the services of a specialist, submitting a code for the service, and then evaluating the request for clinical or financial appropriateness *when the patient has a chronic condition* to provide

treatment of the condition, as in part (k) of claim 1. Instead, as discussed above, Bond and Summerell fail to provide any teaching of assessing a medical request for its appropriateness, and while Provost teaches approving or denying insurance claims after medical services have occurred, Provost does not teach or suggest continually repeating assessment of requested medical services *before such services have been rendered* to provide treatment of chronic conditions. Thus, the method of the instant claim provides substantial benefits in that the costs associated with the treatment of chronic conditions can be minimized and the rendering of unnecessary clinical procedures can be reduced to streamline and improve treatment of the patient.

Accordingly, it is considered that claim 1 and the claims depending therefrom are patentable over the teachings of Bond, Provost and Summerell, and Applicant respectfully requests that the rejection of these claims be withdrawn.

Claim 20 is also patentable over Bond, Provost and Summerell for reasons similar to those given for claim 1 above. In particular, claim 20 recites assessing a medical request and submitting only a single CPT code, then evaluating the code for clinical and financial appropriateness, where the "evaluation is performed by a hospital or case manager that is other than the primary care physician" (emphasis added) in parts (c)-(e) of the claim, and responding to the request based on the evaluating by indicating "either approval or disapproval to proceed with rendering the requested service" (emphasis added) in part (f) of the claim. As discussed above, Bond, Provost and Summerell do not teach or suggest submitting a request for services *to be rendered* or responding with an indication of approval or disapproval *to proceed with the services*, and instead Provost only teaches approving/denying claims for services already rendered, while Bond and Summerell do not teach making the evaluation of the medical service requests. Claim 20 further recites that the request is assessed to determine whether "*in patient-services, out-patient service, referral to a specialist*, or combinations thereof" (emphasis added) are needed, in part (c) of the claim, which services are not taught as being evaluated and/or approved/disapproved by Bond, Provost and Summerell, as has been discussed for claim 1 above. Furthermore, Bond,

Provost and Summerell do not teach or suggest repeating the medical service assessment/evaluation and response steps (c)-(f) for patient's suffering from chronic conditions, as in part (g) of claim 20, as has also been discussed for claim 1 above.

Accordingly, claim 20 and the claims depending therefrom are considered to be patentable over the Bond, Provost and Summerell, and the rejection of this claim and the claims depending therefrom is respectfully requested to be withdrawn.

2. Section 103(a) Rejection of Claims 16 and 28

The Examiner rejected claims 16 and 28 under 35 U.S.C. 103(a) as being obvious over Bond in view of Provost and further in view of Summerell and Wiggins because the Examiner submits that the combined teachings of Bond, Provost and Summerell render the claims obvious as discussed for claim 1 above, with the exception of wherein step (a) the primary care physician is a member of a network of physician contracted to render medical services on behalf of a health plan. *Office Action*, page 13. The Examiner submits that Wiggins teaches providing such a primary care physician and thus renders the claims obvious. This rejection is respectfully traversed.

Claims 16 and 28 depend from claims 1 and 20, respectively, and are patentable over the Bond, Provost and Summerell references for the reasons as stated above. In particular, neither the Bond, Provost nor Summerell references teach the proactive checking/assessment methods that evaluates the clinical and financial appropriateness of medical services before such services are rendered by using a single code the reduces the fraud typically associated with the requesting and billing for such services.

Wiggins does not make up for the deficiencies of these references. Instead, in the section to which the Examiner refers, Wiggins describes "alliance" of physicians for providing medical services to a population of patients that can be a part of a health maintenance organization and receive reimbursement from said HMO for medical services (*see, e.g.,* column 5, lines 35-50). Wiggins does not teach or suggest a method for

assessing/evaluating/responding to requests for services *yet to be rendered* and thus does not teach or suggest the methods of claims 1 and 20.

Accordingly, claims 1 and 20 and the claims depending therefrom, including claims 16 and 28, are patentable over the teachings of Bond, Provost, Summerell and Wiggins, and the rejection of these claims is respectfully requested to be withdrawn.

Conclusion

Applicant respectfully submits that each and every pending claim of the present invention meets the requirements for patentability under 35 U.S.C. § 103 and respectfully requests that the Examiner indicate allowance of each and every pending claim of the present invention.

In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious Applicant's invention as recited in each of Claims 1, 3-7, 11, 14, 16-20, 26, 28-33 and 35-37. The references of record have been discussed and distinguished, while significant claim features of the present invention have been pointed out.

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

If any additional fee is required, please charge Deposit Account Number 19-4330.

Respectfully submitted,

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